

## RIGHTS-OF-WAY AGREEMENT

THIS RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement") is dated April 12, 2016 (the "Effective Date"), and entered into by and between the Borough of Bradley Beach (the "Borough"), a New Jersey municipal corporation, having its address at 701 Main Street, Bradley Beach, NJ 07720 and New York SMA Limited Partnership d/b/a Verizon Wireless with a principal business address at One Verizon Wireless Way, Mail Stop 4AW100, Basking Ridge, NJ 07920 ("d/b/a Verizon Wireless").

WHEREAS, Verizon Wireless has been approved by the Federal Communications Commission (FCC) to provide telecommunications services throughout the State of New Jersey. Pursuant to N.J.S.A 48:3-18 Verizon Wireless may jointly use facilities that have been lawfully erected within municipal rights-of-way; and

WHEREAS, Verizon Wireless proposes to place its telecommunication facilities aerially on existing utility poles or in underground conduit in the public rights-of-way within the Borough of Bradley Beach for purposes of owning, constructing, installing, operating, repairing and maintain a telecommunications system.

WHEREAS, the Bradley Beach Borough Council adopted a Resolution on March 22, 2016, that granted Verizon Wireless its consent to occupy the public rights-of-way within the Borough subject to the execution of this Use Agreement.

WHEREAS, is it in the best interests of the Borough and its citizenry for The Borough to grant consent to Verizon Wireless to occupy said public rights-of-way within the Borough of Bradley Beach for this purpose.

WHEREAS, the consent granted herein is for the non-exclusive use of the public rights-of-way within the Borough of Bradley Beach for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

NOW THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, The Borough and Verizon Wireless hereby agree to and with each other as follows:

**Section 1: Definitions**

- a. "Verizon Wireless" is the grantee of rights under this Use Agreement.
- b. "Borough" is the grantor of rights under this Use Agreement and is known as the Borough of Bradley Beach, County of Monmouth, State of New Jersey.
- c. "Rights-of-Way" means the areas devoted to passing under, over, on or through lands with public utility facilities.
- d. "Utility Pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto and any replacement thereof which are similar in construction and use.

**Section 2: Grant of Consent**

The Borough hereby grants Verizon Wireless its municipal consent for the non-exclusive use of the public rights-of-way within The Borough for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

**Section 3: Public Purpose**

It is deemed to be in the best interests of The Borough and its citizenry, particularly including commercial and industrial citizens, for The Borough to grant consent to Verizon Wireless to occupy said public rights-of-way within the Borough for this purpose.

#### **Section 4: Project Description**

Any construction to be undertaken for the purposes described herein shall require prior notice by Verizon Wireless to The Borough. Verizon Wireless shall fully describe the construction including, but not limited to, system components, wire, transformers, panels, mechanical, moving, or noise emitting parts, etc., to be undertaken and shall coordinate and work with the appropriate Municipal department(s) before scheduling and commencing any construction. All underground work shall follow standard road opening permit requirements. Upon completion of installation, Verizon Wireless shall furnish to the Borough a pole list showing the exact locations of the equipment in a public right of way.

**A. Relocation and Displacement of Equipment.** Verizon Wireless understands and acknowledges that the Borough may require Verizon Wireless to relocate one or more of its equipment installations. Verizon Wireless shall at the Borough's direction relocate such equipment at Verizon Wireless's sole cost and expense, whenever the Borough reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Borough project; (b) because the equipment is interfering with or adversely affecting proper operation of the light poles; or (c) to protect or preserve the public health or safety. If Verizon Wireless shall fail to relocate any equipment as requested by the Borough within a reasonable time under the circumstances in accordance with the foregoing provision, the Borough shall be

entitled to relocate the equipment at Verizon Wireless's sole cost and expense, without further notice to Verizon Wireless.

**B. Damage to Public Right of Way.** Whenever the removal or relocation of equipment is required or permitted under this use agreement, and such removal or relocation shall cause the public right of way to be damaged, Verizon Wireless, at its sole cost and expense, shall promptly repair and return the public right of way in which the equipment are located to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear expected. If Verizon Wireless does not repair the site as just described, then the Borough shall have the option, upon fifteen (15) days' prior written notice to Verizon Wireless, to perform or cause to be performed such reasonable and necessary work on behalf of Verizon Wireless and to charge Verizon Wireless for the proposed costs to be incurred or the actual costs incurred by the Borough. Upon the receipt of a demand for payment by the Borough, Verizon Wireless shall promptly reimburse the Borough for such costs.

#### **Section 5: Scope of Use Agreement.**

Any and all rights expressly granted to Verizon Wireless under this Use Agreement, which shall be exercised at Verizon Wireless sole cost and expense, shall be subject to the prior and continuing right of The Borough under applicable laws to use any and all parts of the municipal rights-of-way exclusively or concurrently with any other person or persons, and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such municipal rights-of-way. Nothing in this Use Agreement shall be deemed to grant, convey, create or vest in Verizon Wireless a real property interest in land, including any fee, leasehold

interest, easement, or any other form of interest or ownership, and does include any state or county road rights of way that might be required.

Subject to obtaining the permission of the owner(s) of existing Utility Poles and underground conduit's, which shall be the sole responsibility of Verizon Wireless to undertake and obtain, The Borough hereby authorizes and permits Verizon Wireless to enter upon the municipal rights-of-way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace its telecommunications facilities, in or on Utility Poles or other structures owned by public utility companies or to be constructed by Verizon Wireless located within the municipal rights-of-way as may be permitted by the public utility company or property owner, as the case may be.

**Section 6: Compliance with Ordinance**

Verizon Wireless shall comply with all existing ordinances of The Borough as may be amended from time to time and with all future ordinances as may be enacted.

**Section 7: Municipal Costs**

Verizon Wireless agrees to pay reasonable costs incurred by The Borough by reason of Verizon Wireless telecommunications system, including, but not limited to, costs for traffic safety during construction of the network within the Borough.

**Section 8: Duration of Consent**

The non-exclusive municipal consent granted herein shall expire fifteen (15) years from the Effective Date of this Use Agreement. Upon expiration of such consent, or at such earlier date that Verizon Wireless ceases to maintain its facilities, it shall remove the facilities at its cost and expense.

## **Section 9: Indemnification**

Verizon Wireless, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless The Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Verizon Wireless's actions under this Use Agreement and costs in connection therewith, except to the extent resulting from the negligent or willful acts, or omissions of the Borough. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorney's fees, court costs and any other expenses that may be incurred by The Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Verizon Wireless activities pursuant to the rights granted in this Use Agreement.

## **Section 10. Notices**

All notices or other correspondence required or permitted to be given in connection with this Use Agreement shall be in writing and delivered personally, by telecopy, by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To Verizon Wireless at	Verizon Wireless
	ATTN: Network Real Estate
	180 Washington Valley Parkway
	Bedminster, NJ 07921

To the Borough at: Borough of Bradley Beach  
701 Main Street  
Bradley Beach, NJ 07720

## Section 11. Liability Insurance

Verizon Wireless shall at all times maintain a Commercial General liability insurance policy with a single amount a limit in the amount of Five Million Dollars (\$5,000,000) per occurrence covering bodily injury (including property damage and Five Million Dollars (\$5,000,000) general aggregate.

Prior to the commencement of any work pursuant to this Use Agreement, Verizon Wireless shall file with the Borough Certificates of Insurance evidencing the coverage provided by said liability and excess liability policies.

The Borough shall notify Verizon within thirty (30) days after the presentation of any claim or demand to The Borough, either by suit or otherwise, made against The Borough on account of any of Verizon Wireless or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Use Agreement.

## Section 12. Assignment.

This Use Agreement may be assigned by Verizon Wireless to its principal affiliates, subsidiaries or to any entity which acquires all or substantially all of its assets in the applicable Federal Communications Commission license area by reason of a merger, acquisition or other business reorganization without the consent of the Borough. As to other parties, any sale, assignment or transfer by Verizon Wireless must be with the written consent of the Borough, such consent not be unreasonably withheld.

**Section 13. Successors and Assigns.**

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

**Section 14. Governing Law.**

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey. Venue shall be Bradley Beach County, New Jersey.

**Section 15. Incorporation of Prior Agreements.**

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

**Section 16. Modification of Agreement.**

This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

**Section 17. Invalidity.**

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible.



**Section 18. Headings.**

The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

**Section 19. Counterparts.**

This Agreement may be executed and delivered in several counterparts, each of which, when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

IN WITNESS WHEREOF, this Use Agreement has been executed as of the date set forth below.

New York SMSA Limited Partnership d/b/a Verizon Wireless

By Cellco Partnership, Its General Partner

Witness

\_\_\_\_\_  
LYNN RAMSEY

Title: Vice President Field Network

Dated: \_\_\_\_\_

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Dated: \_\_\_\_\_

BOROUGH OF BRADLEY BEACH

\_\_\_\_\_  
Gary Engelstad  
Title: Mayor

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mary Ann Solinski, RMC, CMC  
Municipal Clerk

Dated: \_\_\_\_\_